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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA
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HERNÁNDEZ, E.R., HENDRINA VIVAS
CASTILLO, A.C.A., SHERIKA BLANC, VILES
DORSAINVIL, and G.S.,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-01766-EMC

**JOINT STATUS REPORT PURSUANT TO
ORDER RE JOINT DISCOVERY LETTER
(DKT. NO. 129)**

Assigned to: Hon. Edward M. Chen

Complaint filed: February 19, 2025

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Pursuant to the Court’s May 2, 2025 Order Re Joint Discovery Letter (Dkt. No. 129, the “Order”), counsel for Plaintiffs and Defendants met and conferred on May 6, 2025 and provide this status report and their positions on RFP Nos. 1–9.

I. INTRODUCTORY STATEMENTS

A. Plaintiffs’ Position

Plaintiffs acknowledge the Court’s concern that, “[a]s a facial matter,” certain requests appear overbroad due to an “open-ended time frame” or the number of custodians. Order 8 at 2–4. This case is unusual. All of the decisions occurred during a compressed time frame, placing inherent time constraints on the reach of these requests. The compressed time frame at issue also means that the number of custodians is unlikely to materially (if at all) impact the ultimate burden on Defendants in terms of gathering and reviewing documents. In addition, this case involves APA, Equal Protection, and declaratory relief claims in a setting where the Court already has found support for Plaintiffs’ assertions of pretext, bad faith, arbitrary decisionmaking, and racial animus. But mindful of the Court’s guidance, Plaintiffs below describe how they propose to narrow their RFPs to facilitate the prompt production of critical information bearing on issues at the heart of this litigation.¹ Particularly given the exigencies of this litigation, and the number of individuals whose lives hang in the balance, Plaintiffs ask that the Court order Defendants to produce all responsive documents, confirm that no responsive documents exist, and provide any privilege logs for (a) RFP Nos. 4–5 and 7–9 within seven days, and (b) RFP Nos. 1–3 and 6 within ten days. The parties have stipulated to 1) the production of RFP 4-5 within seven days; and 2) an outer temporal limit for searches of RFP Nos. 1-2, as the date of the publication of the challenged Federal Register Notices. The parties have reached partial agreement on search terms for RFP Nos. 1-2. (*See Exhibit 1.*)

B. Defendants’ Position

Plaintiffs continue to be non-specific about the documents they seek and instead request sweeping, general discovery on an accelerated timeline that is unrealistic based on the scope of their

¹ Plaintiffs do so without prejudice due to the need for expediency. Should disclosures reveal deficiencies in the administrative records, uncover key custodians, or bring to light as-yet-unknown consequential documents, then Plaintiffs may need to seek assistance from the Court.

demands. Plaintiffs draw inapposite comparisons to *Ramos*, where discovery was conducted over a period of months, but demand that similar discovery be conducted here within the next week to 10 days. Notably, this Court has not authorized general discovery, but Plaintiffs propound sweeping demands for production without any showing why Defendants are not entitled to the 30 days provided under the Federal Rules to respond to such discovery demands in detail. Even pared down, Plaintiffs seek to minimize that their requests compel the Government to search for, compile, review, and produce the demanded documents in an unreasonably short period of time. Although Plaintiffs argue about the “the exigencies of this litigation,” they provide no satisfactory explanation for the speed with which they seek to have the government produce documents when they have failed to take advantage of the appropriate litigation tactic that would decrease the urgency here. Indeed, in order to create a false sense of urgency now, Plaintiffs have walked back from their previous statement that they would file a motion to postpone the Haiti Partial Vacatur by May 29, 2025 (ECF No. 111 at 11), choosing instead to file a Motion for Summary Judgment. Certainly, Fed. R. Civ. P. 56 allows Plaintiffs to file such a motion for summary judgment – but Plaintiffs claim that their decision to do so now creates an exigent circumstance in which they must have immediate discovery in order to ensure there are no material facts in dispute is specious at best.

Regardless, with a view towards reaching some reasonable middle ground, Defendants offer the following responses to Plaintiffs’ “RFPs” below.

II. RFP Nos. 1–2

A. Plaintiffs’ Position

Time frame: Plaintiffs agree to narrow these (and other) requests to the period most likely to uncover evidence of “intent in reaching the decisions challenged herein beyond that already contained in the administrative record” Order at 8:6–7. Namely, Plaintiffs agree to adopt as cutoffs: (a) February 3 and 5, 2025 for the Venezuela vacatur and termination, respectively, and (b) February 24, 2025 for the Haiti partial vacatur. These cutoffs reflect the dates when the pertinent Federal Register Notices were published. They also reflect tight constraints on the scope of extra-record discovery. The Complaint identifies multiple relevant communications that occurred *after* the dates of these publications, and the Court’s order granting postponement finds post-decision

statements relevant to the claims at issue. *See, e.g.*, Dkt. No. 93 at 65–66 (citing examples of relevant statements between February 2024 and February 2025).

Custodians: Plaintiffs have narrowed the initially proposed 31 custodians/positions to 22 custodians/positions. *See Exhibit 1*. Plaintiffs contend 22 custodians/positions is reasonable and proportional based on the stakes of the litigation. In *Ramos*, Defendants advocated for 22 custodians as adequate, and, even then, Plaintiffs were allowed to request an additional seven custodians to fill gaps in the collections. *Ramos* Dkt. Nos. 47 at 10, 56 at 2, 53 at 2.

Limiting discovery to 20–30 custodians presents challenges in this context because diverse personnel and divisions typically play roles in TPS decisionmaking. A typical TPS periodic review process begins months before the Secretary must make a decision.² USCIS Refugee, Asylum and International Operations Directorate (RAIO) first prepares a country conditions report. The USCIS Office of Policy & Strategy (OP&S) then prepares a Decision Memo—a detailed and substantiated recommendation from USCIS to DHS³—based on the RAIO country conditions report and other governmental and nongovernmental resources, including any recommendation and country conditions report provided by the State Department, and information from other DHS and USCIS components.

USCIS TPS “subject matter experts,” who have typically been with the Humanitarian Affairs Division of OP&S, generally are responsible for preparing the Decision Memo for the OP&S Chief.⁴ The OP&S Chief, upon review and approval of the Decision Memo, presents it to the USCIS Director and senior leadership.

The USCIS Director then typically sends a final signed Decision Memo as part of a “package” to the DHS Secretary and DHS “Front Office.” The “package” may include, e.g., a draft Federal Register Notice, TPS Legal Authority, USCIS RAIO Country Conditions Report,

² *See generally* U.S. Gov’t Accountability Off., GAO-20-134, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of Homeland Security’s Decisions*, 31 (2020) (“GAO TPS Report”) (providing overview of TPS review process); *Ramos* Dkt. No. 128 at 4–5 (Order Granting Plaintiffs’ Motion for Preliminary Injunction).

³ *See, e.g.*, *Ramos* Dkt. Nos. 40–41, 44, 52, 61, 110, 120–122 (examples of decision memoranda and explanation of such memoranda); GAO TPS Report at 21–22.

⁴ *Ramos* Dkt. Nos. 47 at 10, 56 at 2, 53 at 2 (seeking as additional custodians TPS “subject matter experts” part of the Humanitarian Affairs Division).

1 Department of State Recommendation & Country Conditions Report.⁵ The Secretary consults with
 2 the DHS Front Office (which may include the Deputy Secretary, Chief of Staff, Deputy Chief of
 3 Staff, and Senior Advisors) and other central components, including the DHS Office of Strategy,
 4 Policy, and Plans (DHS Office of Policy). The DHS Office of Policy has been responsible for
 5 creating and/or providing documents to the Secretary.⁶ The Secretary makes a final decision
 6 informed by the recommendation in the USCIS Decision Memo and other sources.

7 OP&S TPS subject matter experts have typically been responsible for preparing a draft
 8 Federal Register Notice, often in coordination with Service Center Operations Directorate. DHS
 9 Office of General Counsel will also, prior to the Secretary's decision, review the TPS "package"
 10 prepared by USCIS and the State Department and provide edits.⁷ The General Counsel may also
 7 prepare memoranda documenting the Secretary's decision, communicate directly with USCIS
 12 officials, and consult about changes to the TPS decision process.⁸ The DHS and USCIS Executive
 13 Secretariat have typically been responsible for version control, including through securing
 14 "clearance" of documents, which for DHS has traditionally relied on a Records of Clearance and
 15 Approval at different stages of the process.⁹

16 Here, Plaintiffs face additional hurdles not present in *Ramos* when attempting to winnow
 17 down the list of custodians. Unlike in *Ramos*, many of the individuals who formally signed off on
 18 these challenged TPS decisions appear to *not* be officially assigned to overseeing relevant DHS
 19

20 ⁵ See, e.g., Dkt. No. 110-3 at 27 (Haiti Partial Vacatur AR 164) (official administrative record for
 21 Haiti partial vacatur at issue here, listing many of these documents included in the "Package" with
 22 the DHS Record of Clearance and Approval); *Ramos* Dkt. No. 112-2 at 86 (official administrative
 record of Nicaragua TPS decision, listing many of these documents as included in the "Package"
 with the DHS Record of Clearance and Approval).

23 ⁶ See GAO TPS Report at 31; see also *Ramos* Dkt. No. 122-62 (Memorandum for DHS Deputy
 24 Chief of Staff from Scott Krause, "TPS Recommendations for El Salvador, Honduras, and
 Nicaragua, demonstrating role of DHS Office of Policy and Office of General Counsel in providing
 analysis and recommendations to Secretary as part of periodic review process).

25 ⁷ See **Exhibit 2** - KNK 30(b)(6) Dep. at 117:17–119:16; GAO TPS Report at 31.

26 ⁸ GAO TPS Report at 32; **Exhibit 2** - KNK 30(b)(6) Dep. at 126:17–127:1, 129:12–18, 164:2–24.

27 ⁹ See, e.g., Dkt. No. 110-3 at 27 (Haiti Partial Vacatur AR 164) (official administrative record for
 28 Haiti partial vacatur at issue here); *Ramos* Dkt. No. 112-2 at 86 (official administrative record of
 Nicaragua TPS decision); *Ramos* Dkt. No. 122-47 (Mar.-Apr. 2017) (email thread with USCIS
 Executive Secretariat concerning review process for Federal Register Notice and USCIS
 Recommendation Memorandum for Haiti TPS).

1 components, but rather have such titles as “Senior Advisor” or “Senior Counsellor,” requiring
 2 Plaintiffs to identify custodians who both hold formal positions traditionally integral to TPS
 3 decisionmaking as well as “advisors” or “counsellors” who signed off on these decisions. *Compare*
 4 **Exhibit 3 with Exhibit 4** (examples of DHS Clearance and Approval documents from 2017 and
 5 2025 decisions). Due to rapid turnover, especially during the early weeks of the current
 6 administration, Plaintiffs also have identified instances of multiple people holding a single position
 7 in rapid succession—for instance, at least three people have been named, acting, or nominated for
 8 the DHS Under Secretary of Strategy, Policy and Plans since January 17, 2025.

9 Accounting for all of these variables, and the Court’s concerns, Plaintiffs lay out in **Exhibit 1**
 10 their proposed custodians, including the reasons why each is likely to possess relevant information.
 11 Defendants have not identified any grounds for further limiting the number of custodians due to
 12 burden. Nor should Defendants be allowed to object on burden at this point. Despite multiple
 13 requests, Defendants have not shared any information to enable Plaintiffs to safely eliminate
 14 custodians without prejudice to the quality of information gathering. Defendants have been unable or
 15 unwilling to answer basic questions about, e.g., the identity of persons who approved the challenged
 16 Venezuela actions through the DHS “clearance” process, whether relevant positions were filled
 17 during the time period at issue, or the names of any TPS “subject matter experts” at DHS or USCIS
 18 who participated in the challenged decisions. Defendants should not be rewarded for withholding
 19 such information.

20 **B. Defendants’ Position**

21 Defendants are amenable to searching for documents from the 9 custodians identified by
 22 DHS as likely to have responsive records, utilizing the identified search terms, and to produce
 23 responsive non-privileged documents from January 20, 2025 through a) February 3 and 5, 2025 for
 24 the Venezuela vacatur and termination determinations, respectively, and (b) February 24, 2025 for
 25 the Haiti partial vacatur. *See* Defendants’ position in **Exhibit 1**.

26 To the extent that Plaintiffs seek to dictate the scope of the search necessary to respond to
 27 their “Requests for Production,” Defendants assert they are in the best position to identify the
 28 appropriate custodians and search terms. *See In re EpiPen*, No. 17-md-2785, 2018 WL 1440923 at

*1 (D. Kan. Mar. 15, 2018) (stating that “the party responding to discovery requests is typically in the best position to know and identify those individuals within its organization likely to have information relevant to the case” (*citing Enslin v. Coca-Cola Co.*, No. 2:14-CV-6475, 2016 WL 7042206, at *3 (E.D. Pa. June 8, 2016) (“Asking a court to compel a party to search the ESI of additional custodians is similar to asking a court to compel to undertake additional efforts to search for paper documents. In either case, the requesting party is second-guessing the responding party’s representation that it conducted a reasonable inquiry for responsive information....”))).

Plaintiffs continue to compare this lawsuit with the procedural history in *Ramos*, despite the cases arising in different procedures. In *Ramos*, this Court grappled with four termination determinations for four different countries that were made by three different Secretaries of Homeland Security. The circumstances in that case are far different in scope than those presented here. Defendants have identified the custodians most likely to have relevant information to answer Plaintiffs’ inquiries. Additional custodians are unlikely to reap additional evidence and may instead lead to more disputes. For example, the addition of Joseph Mazzara, the Acting General Counsel to DHS, will only lead to attorney-client privilege claims.

Finally, Defendants note that the request in RFP No. 2 is duplicative of RFP No. 1 and will be captured by searches conducted under the parameters proposed in Exhibit 2.

III. RFP No. 3

A. Plaintiffs’ Position

Plaintiffs agree to narrow the time frame for RFP No. 3 to the same time frame as RFP Nos. 1–2 (*see supra* § II.A), ensuring responsive documents would have been created contemporaneously with the challenged decisions; and narrow the scope to documents related to media appearances or statements referenced in the Amended Complaint. Plaintiffs propounded RFP No. 3 based on their experience in *Ramos*, where such materials revealed relevant information about motivations and purported reasoning underlying disputed TPS decisions,¹⁰ which is why Plaintiffs respectfully request that the Court order Defendants to respond to RFP No. 3 as narrowed.

¹⁰ *See, e.g., Ramos* Dkt. No. 122-17 (May 22, 2017) (email thread about “Haiti TPS readout from the DHS press call”).

B. Defendants' Position

Defendants object to this RFP as it not relevant to the decisions made by Secretary Noem. Furthermore, Plaintiffs have not articulated which specific statements and media packets they believe would be predecisional and relevant to this decision. Announcing a decision is not making a decision, and this request is nothing more than a fishing expedition into matters wholly disconnected from the decision making process.

IV. RFP Nos. 4–5

A. Plaintiffs' Position

Plaintiffs asked for Record of Clearance and Approval documents because, as noted above, they are official records that memorialize who approved TPS decisions as well as the date of each such approval—i.e., these documents will identify who participated in the challenged decisions at issue. After a meet and confer, Defendants have agreed to production. Defendants' Position

Although not a matter considered in making the determinations at issue, because the Record of Clearance and Approval document was included in the Haiti Partial Vacatur record, Defendants agree to produce these two documents in 7 days.

V. RFP No. 6

A. Plaintiffs' Position

As the Court notes in the Order, Plaintiffs asked for the Government to confirm on the record at a recent hearing that Defendants consider the administrative records for Venezuela and Haiti to be complete. Order at 8 at 16–17. Plaintiffs sought that representation to avoid a situation where, in opposition to summary judgment or otherwise, Defendants object to the Court granting relief on the ground that one or more of the administrative records remain incomplete. It is against that backdrop that Plaintiffs asked for and accepted the representation by defense counsel at the hearing.

At the same time, Defense counsel's representation that Defendants consider the administrative records complete does not moot RFP No. 6. Defendants have since confirmed that they have excluded from the official administrative records at least some materials provided to or considered by the Secretary to make the challenged decisions. Defendants have not disclosed the number of documents so excluded from the record, but they identified two examples during the

1 meet-and-confer process for RFP No. 6, and both examples are telling. The administrative record in
 2 *Ramos* contained a document titled “TPS Legal Authority” (**Exhibit 5**), which is a standard
 3 component of the TPS decision-making process, whereas Defendants now take the position that such
 4 documents are deliberative, and therefore not part of the record despite being listed on the DHS
 5 Clearance and Approval document as a record which Secretary Noem considered in making her
 6 decision. (**Exhibit 4.**) Moreover, in *Ramos*, Plaintiffs obtained drafts and final Decision Memos.¹¹,
 7 which are regularly circulated as part of the decisionmaking process, and indeed in a typical periodic
 8 review process provide the central support for and reasons underlying decisions. None have been
 9 provided here in connection with any of the three challenged actions.

10 Plaintiffs therefore ask for a response to RFP No. 6. By definition, documents “provided to,
 11 reviewed by, or considered by the Secretary” in connection with the challenged decisions represent
 12 core documents of the highest possible relevance. Plaintiffs also need a log of the materials withheld
 13 and the basis for withholding them. As the Court may recall from *Ramos*, Plaintiffs learned that
 14 many purportedly deliberative and privileged materials were, in fact, not protected at all. For all of
 15 these reasons, RFP No. 6 remains vital.

16 **B. Defendants’ Position**

17 Defendants object to this RFP on the basis that it seeks to uncover documents covered by the
 18 deliberative process privilege, attorney-client privilege, and attorney work product. As stated in
 19 discovery letter, the “whole record” is ordinarily the “record the agency presents.” *Blue Mountains*
 20 *Biodiversity Project v. Jeffries*, 99 F.4th 438, 445 (9th Cir. 2024). And certain “predecisional
 21 deliberative materials” are not properly included in the whole record. *Id.* “[W]hen the agency has
 22 made formal findings, not every email, draft notice, discussion note, or meeting reminder that
 23 agency personnel circulate in the course of making the decision how to apply the statutory directive
 24 to the facts that they have found constitutes the whole record.” *Ctr. for Biological Diversity v. U.S.*
 25 *Fish & Wildlife Serv.*, No. 21-CV-5706 (LJL), 2022 WL 2805464, at *3 (S.D.N.Y. July 18, 2022).
 26 For example, documents that relate solely to “the mental processes of administrative

27 _____
 28 ¹¹ See, e.g., *Ramos*, Dkt. Nos. 122-41 (Decision Memo for Sudan), 122-45 (Decision Memo for Haiti).

1 decisionmakers” are characterized as “extra-record” and may be obtained only “[o]n a ‘strong
 2 showing of bad faith or improper behavior.’” *Id.* (quoting *Dep’t of Commerce v. New York*, 139 S.
 3 Ct. 2551, 2573-74 (2019)). To the extent Plaintiffs seek privileged material, they have made no
 4 “showing of bad faith or improper behavior” that “might justify production of a [privileged materials
 5 and] a privilege log. *Blue Mountains Biodiversity Project*, 99 F.4th at 445.

6 **VI. RFP No. 7**

7 **A. Plaintiffs’ Position**

8 Plaintiffs agree to narrow the time frame of RFP No. 7 to the same time frame as RFP Nos.
 9 1–2 (*see supra* § II.A), ensuring the relevance of any responsive materials. Diplomatic cables
 10 traditionally contain information about country conditions, which is why they are a regular part of
 11 TPS decision making. For instance, in *Ramos*, such cables contradicted assertions about the
 12 purported safety of certain countries—i.e., diplomatic cables can serve as powerful evidence of
 13 pretext—and included recommendations contrary to the decisions ultimately taken by the
 14 Secretary.¹² Given the less than four-week period covered by RFP No. 7 as narrowed, there is no
 15 reason to believe that RFP No. 7 would sweep in more than a handful of documents. In fact, given
 16 the hurried nature of Defendants’ decision-making, Plaintiffs suspect that Defendants may find zero
 17 documents responsive to RFP No. 7, which would reinforce how these challenged decisions deviated
 18 from settled practice. In short, RFP No. 7 places no undue burden on Defendants and is carefully
 19 tailored to elicit relevant information.

20 **B. Defendants’ Position**

21 Defendants object to this RFP on the basis that to the extent relevant communications from
 22 the State Department were received by DHS, they would be subsumed by RFPs No. 1-2.

23 **VII. RFP Nos. 8–9**

24 **A. Plaintiffs’ Position**

25 RFP Nos. 8–9 place no meaningful burden on Defendants. Nor do Defendants have grounds
 26

27 ¹² *Ramos*, Dkt. Nos. 122-67 (diplomatic cable from U.S. Mission to El Salvador recommending
 28 extension of TPS for El Salvador), 122-69 (diplomatic cable from U.S. Mission to Honduras
 recommending extension of TPS for Honduras).

to oppose production of the administrative records for these earlier TPS decisions. Defendants have placed both of these administrative records squarely at issue by attacking them as flawed. And the administrative records for these earlier decisions have added relevance here because of their close proximity to the vacatur, providing a direct compare-and-contrast between standard decision-making and whatever process (or lack thereof) employed here.

B. Defendants' Position

Defendants will produce the Administrative Record for the January 17, 2025 decision to extend the TPS designation for Venezuela by May 19, 2025. Defendants will produce the Administrative Record for the July 1, 2024 decision to extend the TPS designation for Haiti by May 28, 2025.

Date: May 7, 2025

Respectfully submitted,

ACLU FOUNDATION
OF NORTHERN CALIFORNIA

/s/ Emilou MacLean
Emilou MacLean

Attorneys for Plaintiffs

Date: May 7, 2025

U.S. DEPARTMENT OF JUSTICE

/s/ Sarah L. Vuong
Sarah L. Vuong

Attorneys for Defendants

SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that each of the other Signatories have concurred in the filing of this document.

ACLU FOUNDATION
OF NORTHERN CALIFORNIA

/s/ Emilou MacLean
Emilou MacLean